

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

KELLY LEEMAN
Logansport, Indiana

ATTORNEY FOR APPELLEE:

MICHAEL P. KREBES
Kokomo, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAVID WARPENBURG,

Appellant-Respondent,

vs.

CATHY WARPENBURG,

Appellee-Petitioner.

)
)
)
)
)
)
)
)
)
)

No. 09A02-0706-CV-492

APPEAL FROM THE CASS SUPERIOR COURT
The Honorable Douglas B. Morton, Special Judge
Cause No. 09D01-0404-DR-33

December 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

In this dissolution action, appellant-respondent David Warpenburg appeals the trial court's denial of his request that his former wife—appellee-petitioner Cathy Warpenburg—pay spousal maintenance. David also contends that the trial court abused its discretion in effecting an equal division of the marital property. Finding no error, we affirm the judgment of the trial court.

FACTS

Cathy and David were married on August 6, 1977. Thereafter, on April 1, 2004, Cathy petitioned to dissolve the marriage. At the time of the final hearing, the parties' adult child was living with David at the marital residence in Logansport.

Cathy was employed as an elementary school teacher and earned between \$53,000 and \$55,000 annually. David had been employed at the Cass County Highway Department and operated an excavation business for additional income. David earned \$27,000 in 2005, the last full year that he worked. David also owned equipment that he used in his business, which was appraised at \$52,900. David previously held a real estate license, and he testified that he could probably have the license reinstated if he returned to school.

In December 2006, the Social Security Administration determined that David was disabled and unable to continue working for the County or in his excavation business. Evidence was presented at the final hearing on February 26, 2007, that David had undergone several neck surgeries and had been diagnosed with Hepatitis C. The evidence further established that David began receiving monthly disability benefit payments in the amount of \$1255 in January 2007.

David maintained an account with the Indiana Public Employees Retirement Fund (PERF) that reflected a balance of \$41,968.46 as of September 30, 2006. He also had several other bank accounts in his name totaling \$115,294.64. The trial court awarded David the PERF account, the bank accounts, three motor vehicles valued at \$4000, the marital residence valued at \$50,000,¹ and a river cottage that was worth \$7500. David was also ordered to sell his excavation equipment and pay Cathy the necessary amount from the proceeds that would result in a “fifty-fifty” split of the marital assets. Appellant’s App. p. 7.

The trial court assigned all of the marital debt to Cathy, which included college expenses incurred by the parties’ emancipated child totaling \$14,600 and a \$24,350 balance on a Jeep Wrangler that their son drives. Cathy was awarded her pensions, various checking accounts, several motor vehicles, and various household goods and furnishings.

The trial court declined David’s request for spousal maintenance and concluded that “David has established a social security disability and maintains his retirement account so that he has a satisfactory income stream to address his life’s issues.” Appellant’s App. p. 7. David now appeals the denial of his request for spousal maintenance and the trial court’s division of the marital property.

¹ The trial court believed that the marital residence was undervalued because David acknowledged in an answer to one of Cathy’s interrogatories that the house had been originally appraised at \$102,000 for property tax purposes. Appellant’s App. p. 21. However, during cross-examination, David acknowledged that one of his life-long friends performed the appraisal, which was admitted into evidence at the final hearing. That appraisal valued the residence at \$50,000. Appellee’s App. p. 10-11.

DISCUSSION AND DECISION

I. Spousal Maintenance

In addressing David's contention that the trial court abused its discretion in denying his request for spousal maintenance, we note that Indiana Code section 31-15-7-2(1) provides:

If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected the court may find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court.

In construing this statute, we have determined that the trial court may make an award of spousal maintenance upon finding that a spouse's self-supporting ability is materially impaired. Bizik v. Bizik, 753 N.E.2d 762, 768 (Ind. Ct. App. 2001). The essential inquiry is whether the incapacitated spouse has the ability to support himself or herself. McCormick v. McCormick, 780 N.E.2d 1220, 1224 (Ind. Ct. App. 2003). The trial court's power to make an award of maintenance is wholly within its discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances of the case. Matzat v. Matzat, 854 N.E.2d 918, 920 (Ind. Ct. App. 2006).

In support of his proposition that the trial court erred in refusing to order spousal maintenance, David directs us to the following language in Cannon v. Cannon:

Where a trial court finds that a spouse is physically or mentally incapacitated to the extent that the ability of that spouse to support himself or herself is materially affected, the trial court should normally award incapacity maintenance in the absence of extenuating circumstances that directly relate to the criteria for awarding incapacity maintenance.

758 N.E.2d 524, 527 (Ind. 2001). In Cannon, conflicting evidence was presented to the trial court regarding the extent of the wife’s physical ailments. The husband’s medical expert believed that the wife would be unable to perform fulltime work and that she had incurred various therapy expenses as the result of depression. Id. The trial court found that some evidence was presented that the wife had been able to earn income by conducting garage sales, but she was unable to document her earnings. Id. The trial court concluded that the “evidence as to whether [the wife] was disabled to the point that her ability to support herself is materially affected is inconclusive,” and denied the wife’s request for maintenance. Id. Our Supreme Court affirmed the trial court’s denial of the request for spousal maintenance and concluded that the relative weight and credibility of the evidence and witnesses at trial are matters within the purview of the trial court. Id.

In our view, David’s interpretation of Cannon—that a trial court must award maintenance to any spouse who shows incapacitation regardless of its effect on the ability to support himself or herself—is misplaced. In this case, although the trial court determined that David had experienced significant health problems that precluded him from continuing employment in his previous occupations, the evidence established that those ailments did not prevent him from supporting himself through other means. As noted above, the trial court awarded David the marital residence at a reduced value that carried no mortgage, as well as three motor vehicles that were free from encumbrances. Appellant’s App. p. 5-6. The trial court also awarded David his entire PERF account, which was in excess of \$40,000, along with the other bank accounts totaling more than \$115,000. Id. at 1, 3. Moreover, David was

not ordered to pay any of the marital debt, which might otherwise have consumed some of those assets. In light of these circumstances, it is apparent that the trial court concluded—after examining the evidence and considering the testimony of the parties—that David’s disability did not materially affect his ability to support himself. Thus, we decline to set aside the trial court’s decision to deny David’s request for spousal maintenance.

II. Property Division

David argues that the trial court erred in dividing the marital property evenly between the parties. More specifically, David maintains that the trial court ignored “undisputed evidence overwhelmingly supportive of statutory factors supporting a division of assets other than 50-50.” Appellant’s Br. p. 14.

In resolving this issue, we initially observe that Indiana Code section 31-15-7-5 provides:

The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
 - (A) before the marriage; or
 - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.

(4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.

(5) The earnings or earning ability of the parties as related to:

(A) a final division of property; and

(B) a final determination of the property rights of the parties.

Subject to the statutory presumption that an equal distribution of marital property is just and reasonable, we note that the disposition of marital assets is committed to the sound discretion of the trial court. Helm v. Helm, 873 N.E.2d 83, 89 (Ind. Ct. App. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom. Id. An abuse of discretion also occurs when the trial court misinterprets the law or disregards evidence of factors listed in the controlling statute. Id. The presumption that a dissolution court correctly followed the law and made all the proper considerations in crafting its property distribution is one of the strongest presumptions applicable to our consideration on appeal. Id. Thus, we will reverse a property distribution only if there is no rational basis for the award. Id. Finally, although the facts and reasonable inferences might allow for a different property distribution, we may not substitute our judgment for that of the dissolution court. Id.

In this case, David maintains that the trial court denied his request for spousal maintenance because it purportedly found that the disability occurred after the parties had

separated. Therefore, David claims that property division order cannot stand because the trial court did not “carefully consider the statutory factors enumerated above before awarding an equal distribution of marital assets.” Appellant’s Br. p. 15.

Notwithstanding these contentions, we note that David merely speculates that the trial court made such a determination with regard to the denial of his request for spousal maintenance. Hence, his argument regarding the unfair property division fails. Moreover, even if it could be assumed solely for argument’s sake that the trial court made such a determination, we note that the trial court adopted neither David nor Cathy’s proposed findings and decree. Indeed, when a trial court enters findings of fact and conclusions of law sua sponte, the specific findings control only as to the issues they cover, while a general judgment standard applies to any issue upon which the court has not found. Dewbrew v. Dewbrew, 849 N.E.2d 636, 640 (Ind. Ct. App. 2006). Therefore, the trial court’s finding with regard to spousal maintenance applies only to that issue and the finding cannot be transferred to the issue regarding property division. As a result, David has failed to overcome the statutory presumption in favor of an equal distribution of the marital property set forth in Indiana Code section 31-15-7-5, and we decline to substitute our judgment for that of the trial court.

The judgment of the trial court is affirmed.

SHARPNACK, J., and RILEY, J., concur.